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The Next Century: The Challenge

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THE NEXT CENTURY: THE CHALLENGE: A PANEL DISCUSSION

Barber Conable
President, The World Bank

We obviously are all poised between the past and the future, and I understand my role here is to try to pierce the veil of the future a little. But in this extremely nostalgic environment I must acknowledge that at the age of sixty-five the human condition is rather more tilted toward experience than aspiration. I look back on my days here with great respect.

Cornell is a profoundly human institution and I can't help but summon up some of the human figures from Cornell Law School's past. Out of deference to those present I'll just mention a few of them. Memories: John McDonald with a pencil in his mouth looking for a citation and talking quite incomprehensively as he did it; or "The Big Thumb" as we used to call Horace Whiteside; or Art Sutherland holding the door for his students—always the gentleman. Remember that joke that Bert Wilcox used to tell on all occasions about Mudd on the Soft Palate?

It is because it's such a human institution that Cornell Law School holds such a strong place in our hearts. It must remain so if it is to be a successful law school. My plea for the future of this school is that it retain some of the balance that has to be struck between human experience and intellectual challenge. We had both here and both meant a great deal more to us than either could have by itself.

I suppose I'm here primarily to talk about public service. Recently, I had an Indian newspaper editor visit me in Washington. I asked him about the Indian parliament and he said, "It's just like all the other parliaments of the world—too many lawyers." When I first ran for a legislative office my three opponents all ran against me on the ground that I was a lawyer. I'm happy to say I didn't apologize. Public service breaks down into two different categories as far as lawyers are concerned; the great specialists all wind up in the executive branch and the generalists wind up in the legislative branch of whatever government they are serving. While I thought I knew what I was going to do when I left Cornell Law School, my sense of destiny was not sufficiently developed to prevent my accommodating to the vicissitudes of those political accidents that occur in life to

those who don't have a strong sense of destiny or are not strongly linked into one particular course or another.

I thought I'd try the big city. I went to Buffalo and found there that I was terrified to be offered a job as a tax specialist. My brush with the tax law had been with Harrop Freeman here and it both confused and bewildered me. It terrified me, as a matter of fact, and that's the reason I wound up on the Ways and Means Committee in Congress. If I had accepted the opportunity to be a tax specialist in the great city of Buffalo I would never have found my way into politics in the first place. Had I gotten into politics as a tax specialist I would not have been able to explain the tax law in terms my constituents could understand.

After I left Buffalo I went to a smaller place—Batavia, New York—and there took on whatever walked in. It was, sociologically a very satisfying experience but not one for the development of intellectual preeminence. There I became a generalist in the law—skating across the surface of every subject with a surface credibility and knowing after awhile what questions to ask. It qualified me very well to be a congressman. In fact, I could not have been a congressman had I been a specialist in *any* aspect of the law. Even though lawyers are needed in government, they are not normally needed to be congressmen; they are needed to be advisors of congressmen. So, if there is an interest in generating public service in an institution like Congress, you must retain the balance that will permit people to reach out in every direction rather than forcing them into that rigid mold that ultimately qualifies them only to be an expert. We need experts—there's no question about that. But we also need people who can respond on a wide range of social levels, of human levels, to the expectations of their fellow man. Law is the buttress of freedom but choice is the stuff of freedom. Therefore, I hope this institution will continue to offer a choice that allows people to find the level that they want to find.

Now, I will be a bit more specific and respond to my current condition in this international trouble I'm in. I must say that looking ahead I can only confirm what Professor Schlesinger has said about the need for comparative law—for some better grounding in the transnational opportunities that are available to lawyers today. I'm in the development business at the present time. I'm there because, after some years of running the institution in which I serve by the exercise of the skills of business or banking, a decision was made that the leader of the World Bank should have some political experience since he would be involved in the politics of 151 countries. We're testing that theory at this point.

The United States in the past has been relevant in international

affairs through the dominance that's possible with military and economic strength. I must tell you that in the future the skills of negotiation are going to be necessary if the United States is to remain relevant to the world. I am in a cooperative institution in a confrontational world. Frequently, the attempted projections of American force—the force of intellect, the force of economy—into this institution are misunderstood totally by the rapid-growing nations of the world. We are now seeing a shift in world balance that's going to require a new skill in Americans that they've not had to use in the past. Thus it seems to me that comparative law is one subject that must be made available, that must be skillfully addressed, by the American lawyers of the future. Cornell has been stressing comparative law to a much greater degree than other law schools. Balance must be maintained here. We, the lawyers of America, are still going to have a very substantial domestic constituency. However, clearly our effectiveness as part of the world is going to depend on the understanding that goes with comparative study and the skill that goes with the capacity to negotiate from a position not of strength, but of cooperation.

I'm very hopeful this institution will not lose its essentially human character. I would hate to see it become a school pressing exclusively towards specialization. But I do believe it is terribly important for this institution to be relevant to the world as it will be and not the world as we in this room have known it. It is a dynamic environment in which we live and that environment is going to test us: test our willingness to change, test our willingness to learn and our willingness to accept parity with other human beings elsewhere, something in the secure America past that was not necessary as we could live with our own unique values in our own environment with great comfort, satisfaction, and success..

I appreciate what this school has meant to us. I think it can mean a great deal for the future as well because in places like this those elements of human understanding that make the whole human being can come to full fruition. This is not so in the great legal factories of the east coast where skill is emphasized and where reputation is sought, rather than understanding. I hope we'll never become a bar cram course. I don't think we will, I don't think there's much danger of that in this environment. I hope we'll continue to find that balance that is so important to the human condition.

Tyrone Brown

Partner, Steptoe & Johnson, Washington, D.C.

People in Washington really suffer. The cherry blossoms have come and gone, the apple blossoms and the dogwoods are out. Yesterday afternoon hundreds of people in downtown Washington decided to take lunch on a bench, in a park, or along the tidal basin. The life is so difficult and not nearly as challenging as the life one experiences in the environs of Ithaca—for example, my traveling through a blinding snowstorm in Towanda, Pennsylvania last night about midnight.

There's something bad and something good about being a lawyer in Washington that is relevant to our topic this morning. The bad thing is that one in every twenty-two living and breathing souls in Washington, D.C. is a lawyer—one in every twenty-two husbands, wives, children, taxi cab drivers, and waiters. It makes one think long and hard before threatening to sue. The good thing about being a lawyer in Washington is that one in every twenty-two inhabitants in Washington is a lawyer. It suggests no matter how begrudgingly, that it is still the case that our society looks to lawyers to deal with the political, social, and economic problems of the country and relies on them in terms of getting these problems resolved as a public matter. The fact that our country continues to do that, not just in the public sphere but also in the private sphere, may say something not so great about our society. But I think it says something encouraging about what great law schools like Cornell have been doing over the years and something positive about the future.

I would like to make three substantive comments on the topic of discussion this morning. First is the stark fact, which our educational system and law schools have not really embraced, that given current birthrate and emigration patterns this country, shortly after the turn of the next century, will have a population that is 40 percent or more of what we describe as minority today—largely Hispanic and Black. This society will have to deal with the hopes and aspirations and the need for mobility of these groups in ways that it has attempted haltingly in the past but has not succeeded in doing. And law schools and the lawyers will play a very important role in any accommodation which will be made. Under these circumstances, it simply cannot be the case, for whatever reason, that the law schools, including Cornell, do not attract and graduate a significantly larger number of minorities into the profession than they have been able to do until today.

I make this comment not to criticize this law school or any other

law school. I'm the chair of the hiring committee at my law firm. I've been struggling with the same issue within the context of practice for the past two years. But the fact of the matter is that if we as lawyers, if we as a profession, are to remain relevant in the most important domestic accommodation that will be made over the next two decades then we must find a way to include larger numbers of very well-trained lawyers who are minorities in our mist.

One specific way that we can deal with that issue is to take a close look at the barriers involved in financing a legal education today. I could not have gone to the Cornell Law School without very substantial scholarship aid—not loan aid, but scholarship aid. I simply could not have gone. The financing of a legal education today relies almost completely on resources available directly to the student or upon loan assistance. Where only loan assistance was available, the student graduating from law school, and I see this every day in interviewing students, is directed toward the large firm private practice in order to repay very, very significant education loans. Under these circumstances the profession and the law schools are unwittingly directing the profession away from the very important involvement in the accommodation which our society is going to make over the next couple of decades.

To make my second point, I'll start with an antedote: Shortly after arriving in Washington, I had dinner one evening with two of my fellow law clerks and our wives. We three lawyers, men, were very cocky. We felt very arrogant—we were clerking for important judges and we had just completed very successful careers at law school. During the course of the evening, as young lawyers, in particular, will, we spent all of our time talking about the current legal issues that we were dealing with as appellate questions. Finally, one of our wives, all of whom were brilliant in their own right, just got fed up with it and said, "You gnys are just so arrogant, you think you can do anything." I smiled at her and said, "No, that's not right, but give me a weekend." At that, she threw her shoe at me.

I'm a little ashamed at having made that comment, but I think it says something about us as lawyers—something that's important, aside from all of the correct but not relevant things. That is, traditionally the training that we have received has been in an approach to problem solving and in the handling of a language. That approach has set me in very good stead, time and time again, in my practice and when I was in government. I find myself playing interpreter among other disciplines—the economists, the engineers, the computer scientists, the deal doers, the regulators—who may be involved in a particular problem that needs to be solved. I think that's a large part of the success of our profession. As I rub that notion, I

come to the conclusion that legal training has been so successful in sending out trained professionals who play an important role in society because legal training is a continuation of the traditional basic liberal education. That element of legal training is probably the most important, the most constant, and the part of it that needs to receive continued emphasis as we go into the next century. So, I would amend the quote on our program somewhat to say that the mission of Cornell Law School is to send out a fair number of well-trained, large-minded, morally based men and women.

My third point, because I am a hiring chairman for a law firm of 200 people, is that over the past twenty years I've seen quite a change in what, at least the large law firms, expect from their young, entering lawyers. When I entered the practice, the initiate was involved in, for essentially a year to two years, what we describe today as paralegal or law clerk's work. Of course, back then, the salary for an intern lawyer was about one seventh of what it is today. Today we expect the lawyers whom we pay \$60,000 fresh out of law school to arrive able to perform productive lawyering work.

As a hiring committee chairman, I am really involved in the business of buying the best legal talent that I can find to apply as quickly as possible to the efficient resolution of my client's problems. Given the economics and the costs that are involved in that undertaking, it is getting to be less and less possible for law firms such as mine to train young lawyers the way that my first law firm did twenty years ago. What that says to me, in terms of a practical side of law school training, is that perhaps at the same time that we continue to emphasize the liberal, broad-based element of the training we should also place more emphasis on concentrated work in a particular area, not so much to train the lawyer in a substantive area of the law but to make the law school experience closer to what the lawyer is likely to experience in his or her first job. These elements are going to be true whether the lawyer goes to capital hill, the justice department, a small law firm, or a large law firm. That is going to be basically a case approach which involves a good deal of writing, a good deal of research, and a good deal of argument among members of a team in attempting to resolve a problem. I think it would be good that the law school could emphasize that kind of approach.

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Roger C. Cramton

Robert S. Stevens Professor of Law, Cornell Law School.

Some years ago when I was a young law teacher at the Univer-

sity of Chicago, a similar celebratory occasion took place when that school's new building was dedicated. Students, faculty, and alumni were joined by a number of notables in a program celebrating the achievements of the school. The most memorable moment came at the end of Mayor Richard Daley's flowery welcoming address. "Together," Daley said, "we shall rise to new platitudes of achievement."

I feared on my way from England, where I have been on sabbatic leave, that this occasion might suffer the same fate. We are indebted deeply to Sol Linowitz, Rudi Schlesinger, and the other participants for giving us loads of good substance, not merely a collection of celebratory platitudes. Rudi's tripartite advice provides a good foundation for our efforts this morning to envision the future development of the Law School. Barber Conable has directed his attention to Rudi's first recommendation—that a focus on international and comparative law is essential as growing interrelationships shrink our world into a global village. I agree, and will direct my attention to Rudi's other two themes.

The university law school, a distinctively American institution that arose in the late nineteenth century, has always had an uneasy relationship with both the university and the legal profession. From the university point of view, law schools were viewed as too vocationally oriented, too insular, too unintellectual. Thorsten Veblen's oft-repeated jibe—"there's no more reason for a university to have a law school than a school of dancing"—epitomizes this view. At the same time the legal profession viewed academic lawyers, who were referred to as "the schoolmen" until the 1950s, as starry-eyed idealists and thinkers who were olympian and reformist in orientation. Perhaps because of the pulls in both directions, the university law school first solidified its position and then prospered. Its precarious posture, with one foot in the academy and the other foot in the practicing profession, turned out to be a creative stimulus, not a handicap.

The university law school is a great success story of the twentieth century, responsible in large part for the ideas and people that have transformed American law and American society from the horse-and-buggy small-town era to the urbanized, industrialized colossus of today. At Cornell, as at other great law schools, we have a proud past. Where are we now, and what about the future?

In the last twenty-five years, law faculties, especially at the best schools, have become much more academic and scholarly in their orientation. There is a danger today that the foothold in the profession may be lost and that university law schools will end up trying to balance themselves with one foot in the university and the other in

thin air. The term "thin air," of course, is a caricature that is terribly unfair to the scholarly fashions that are so dominant in many law faculties today. The unfulfilled promise of legal realism has become much more of a reality as law teachers have immersed themselves in economics, philosophy, history, and sociology. Many legal scholars have become multi-disciplinary in interest and competence; and members of these related disciplines have been added to law faculties. In each of these "law and . . ." fields, there is today a rich scholarly literature. The methods of inquiry and analysis of these other disciplines have deepened and broadened legal scholarship, and the fruits of this research increasingly are being brought to the attention of law students.

But every social development creates some new concerns. As legal scholars have become more specialized in legal theory or that of a related discipline, their dialogue and concerns tend to shift away from those of the practicing profession. Articles and monographs are written for other specialists in the sub-discipline rather than for a broader audience. Ordinary practitioners often find this literature irrelevant, if not unintelligible. One can imagine an ordinary lawyer wandering into the faculty lounge these days and encountering a brisk dialogue concerning the paradigms of deconstruction or hermeneutics, or whether the externalities of a particular proposal satisfy Pareto optimality, or whether a deontological approach might be better. The visitor might wonder whether he hasn't wandered into the wrong faculty lounge—"Is this really the law school or am I somewhere else in the university?"

Scholarship of this character, as I have said, is not aimed at judges, lawyers, and government officials, but at coterie of scholars who constitute sub-disciplines of economics, history, psychology, or sociology. Each subdiscipline consists of a small international group of scholars who read each other's papers. Much of this writing is at a level of abstraction that is even puzzling to those of us who try occasionally to understand it. Sometimes it is so arcane and specialized that no one else can understand it. Its abstract quality, combined with a great deal of jargon, lead many practicing lawyers to conclude that it has little or nothing to say to them, even if they could understand it. Practitioners, of course, are particularistic problem solvers. They are always dealing with problems that are embedded in a rich institutional and social context. Writing that will meet their needs has to reflect the context in which lawyers do their problem solving. Much that is currently fashionable in legal scholarship seems like pushing smoke into bottles, interminably and at great length.

The increased tension is not only with practitioners, but also

involves law students. This tension explains in part why law students, despite the vast improvements in legal education, find the experience generally less satisfying than their predecessors. Consider the objective facts: faculties have grown in quality and size, students are better, the law curriculum has been broadened and improved, student-faculty ratios are more satisfactory, and libraries, administrative services, and physical facilities are vastly improved; yet students are less happy with the educational experience. They complain more than their predecessors did and find the experience somewhat less satisfying. Why? One reason is that they are preparing for legal careers and the changes that have occurred have made law school appear to be less relevant to becoming a practitioner. Very quickly law students become too interested and too dominated by immediate first job and vocational concerns. They sense that some of their teachers are disinterested in the profession's problems, and that a few actively are disdainful of practitioners, denigrating what it is that ordinary lawyers and law officials do. It doesn't sit well with students, who know that they are going to be engaged in these activities in a short span of time. Criticism of the profession carries an edge of criticism of the student's chosen life work.

The efforts by law teachers to infiltrate economics, history, philosophy, or sociology into many law school courses is highly commendable, but it often seems irrelevant to the students and to their desire to prepare themselves for professional practice. Partly this reaction stems from too short-term a focus on the part of many students. Moreover, law teachers have by and large nationwide abandoned the rigorous technique of dialectical teaching that was the core and major interest of law school in the past. I am referring here to the familiar faculty figure of the past—the demanding Socratic teacher. These larger-than-life figures came with varying personal qualities, but common ingredients were a quick intelligence and an appetite for and prowess at rigorous legal analysis. A “case class” usually featured an endless succession of questions, hypotheticals, uncertainties, and quandaries that forced the students to think through the nature of law and the reasonableness of legal doctrine in a particular area. In its classic form, a significant but rarer experience, the teacher never, never, never answered a question.

Today's law classroom tends to be populated by teachers who are more reluctant to press students or to force them to participate. Lecturing in one form or another is much more prevalent and modes of discussion are much gentler than in the past. Often what appears to be discussion is really disguised lecture—the teacher asks a question; when it receives no response, he or she asks another

question that suggests an answer; after a few volunteered comments by students along the lines suggested, the teacher gives a mini-lecture on the topic before initiating the cycle again with another question. Good lecturing, of course, is a form of teaching that is here to stay for good reasons. But the more rigorous Socratic method has virtues that it would be a shame to lose entirely. Efforts must be made to preserve it by encouraging some law teachers to continue it or to try it.

Implicit in what I have said is the normative premise that university law schools, or at least most of them, should continue to be professional schools. The other option, which has great appeal, is that of transforming the law school into a graduate school of law. Although a case can be made for this transformation, it is unclear to me why the tuition for those preparing for law-related careers should be the funding basis of what essentially would be Max Planck institutes of legal theory and legal research. Our society needs research centers of that type, but the funding should come from government, private foundations, or private donors, not from law students who seek to prepare themselves to practice law. As long as student tuition pays for legal education, a substantial portion of the law school's resources must continue to be devoted to helping those students become good lawyers.

How can we maintain the uneasy straddle between the academy and the law office? Here are a few quick suggestions. First, we should try hard, even though it is very difficult, to recruit and maintain a critical mass of faculty who have substantial practical experience and a strong interest in doing quality teaching and research on problems of interest to the legal profession. Law, like other disciplines, has a degree of autonomy of its own. The distinctive craft, theory, and art of the legal discipline is worth studying in its own right. And society needs the law reform that can only come from good academic lawyers addressing serious deficiencies in the existing legal system. If law teachers don't perform this function, it is unlikely to be done.

Recruiting and nurturing traditional law teachers in today's world is difficult for several reasons. The earnings gap between what the brilliant young practitioner can earn and what that individual can earn in law teaching is widening all the time. The changing culture of law schools provides an increasingly strange, sometimes uncomfortable, milieu for lawyers who are oriented toward the profession and its problems. The kind of research interests and writing that these individuals bring are sometimes less highly valued by some of their interdisciplinary and more theoretical colleagues. The scholarly requirements of promotion to tenure are growing;

and more of a career change is involved today when a bright lawyer leaves a law firm to become a law teacher. Wholly apart from tenure, one wants to be highly regarded by one's peers. In some law schools today, the traditional legal scholar may feel unappreciated and gradually drift away.

A second measure is that of encouraging faculty members to interest themselves in the fascinating problems of lawyers and the legal profession. What do lawyers and law officials do, how, with whom, and with what effects? Exploration of these issues has descriptive, doctrinal, empirical, and theoretical facets. They can fit into the interdisciplinary model, yet they are of interest to law students, lawyers, as well as scholars of other disciplines. Law students can be excited by this kind of interdisciplinary infusion, which offers a bridge across the widening chasm that separates the academy from the practicing profession.

Third, we should seek to encourage and to protect that endangered species—the hard-nosed Socratic law teacher—so that the excitement, intellectual challenge, and transforming quality of legal education can be maintained and strengthened. Learning requires a leap of faith on the part of students—a trust in the teacher's interest in their education and intellectual development. Students have to assume that the person who is making them miserable by forcing them to think has their best interest at heart and is not just an ogre. In order for that leap of faith to be made, the student culture, reinforced by faculty attitudes, has to reassure each student that there is light at the end of the tunnel, that painful interludes will be followed by understanding, learning, and growth in competence. If the classroom is infused with mutual respect, trust, and confidence, students and teachers can take the intellectual risks, involving the possibility of mistake, that transform people. Learning is sometimes painful and thinking is always hard work. All of us are tempted to avoid these rigors. A law school today must take pains to support teachers who are demanding, challenged, or innovative. Otherwise, in this consumerist age, soft teaching and relaxed standards, by some Gresham's law, will drive out rigor and quality. Too much consumerism—an emphasis on short-term student satisfaction and comfort—is alien to good education.

Finally, and this is inconsistent with both the manner and substance of everything I have said so far, we should try to take ourselves a bit less seriously. The fate of the universe does not turn on our curricular or research choices. We need large doses of humor and compassion for the human situation in which we find ourselves.

Legal education, despite its manifest faults, continues to be one of the great success stories of the twentieth century, producing a

stream of smart, energetic, and public-spirited lawyers who mesh the gears of our society and nudge it a bit toward greater realization of its ideals—liberty, equality, and justice. The Cornell Law School, despite its manifest faults, has contributed in large measure to these endeavors. Our students are so able that nothing we can do to them in the ninety weeks they are here can prevent them from achieving professional success, money, power, and, in most cases, a redeeming social grace.

With humility, compassion for others, and a good laugh now and then at the absurdities of the human situation, the law school will continue to provide a vision of the potential of a legal career as a good and meaningful life of service and connection to our fellow humans.

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Sheri Lynn Johnson

Professor of Law, Cornell Law School.

If my appearance doesn't give you doubts, I'm sure the shortness of my introduction compared to the longer introductions of the first three "sages" may make you doubt that indeed I am a sage at all; in fact I will not even try to address the very broad question of the challenge of legal education in the next century. More technology? Psychology? More clinical education? Less? I know that I currently lack the experience to make those kinds of broad pronouncements and I suspect that I will always lack the wisdom to make such pronouncements. What I *can* talk about is the challenge of being a legal educator.

That challenge is a very individual one and different, I think, for each faculty member. My challenge is probably not typical. I teach public law courses: criminal procedure, criminal law, constitutional law, and children's rights. Before I started teaching, I worked in a public defenders' office. Few of my students—in fact, practically none of my students—will practice in the areas that I teach, or have practices that are remotely like the practice that I experienced. I cannot, therefore, think of my job as primarily task-specific training. I don't think task-specific training is unimportant, but given what our lawyers will do, it is not the focus of my mission. I also don't think that the challenge of my job lies in broadly teaching doctrine to generally educate good lawyers. I spend enormous amounts of time doing that and I think that it is a central task, but I wouldn't call it the *challenge*. We have very bright students and most of the time, although I'd never admit it to them directly, they manage to learn enough doctrine, or at least most of them do. The challenge, I

think, is in the task that I feel that I often fail at, but nevertheless feel compelled to keep attempting. That task is altering the attitudes that hinder lawyers in becoming advocates for a more just legal system, a duty, I think, incumbent on all lawyers regardless of the nature of their practice or their politics.

Let me tell you about three of the students whom I failed, and how they exemplify the attitude that I feel challenged to eliminate. The first student was very quiet. She sat through most of my constitutional law course and only talked when questioned. She responded adequately, but certainly not enthusiastically, and never volunteered. She sat through most of the class and through four weeks of equal protection doctrine without offering an opinion. Then, very late in the course, she walked up to me after class and said, "I'm not sure I should ask this, but don't you really think that it's easier to be black in this society than it is to be white?" She continued, "I don't mean it always was, you know, I don't mean ten years ago, or even five years ago. I mean discrimination has been outlawed and there are all these affirmative action programs. Don't you really think it's easier?" Now this student was extreme, but in milder forms I think that hers is a common attitude: *It's all been done*. Actually it's a very young attitude, a sort of, oh-I-wish-I-lived-when-there-were-dragons-but-there-just-aren't-any-dragons-any more attitude. Of course this attitude is naive, and doesn't recognize that complex social problems rarely are really solved or totally disappear, but if undisputed, "it's all been done" is the best excuse for doing nothing. You don't have to work for a more just legal system if the legal system is already perfectly just.

The second student came to my office. "Before I came to law school," he said, "I wanted to be a public defender." Now, this really excited me. "At last," I thought, "a student I really can train," someone who will follow in my footsteps." But that was before he finished the sentence, "... but now that I have taken criminal procedure from you, I see how hopeless it all is. All of the decisions are going the wrong way, it just doesn't matter what a lawyer would argue. Now what do I do?" Well this, of course, made me feel even worse. Not only had I failed to combat a destructive attitude, I had helped to create it. In generic form I'd call this attitude: *It can't be done*. It's not quite as powerful an excuse as "it's been done," but this second excuse can be used when "it's been done" just couldn't be maintained. It's older and wiser and it sometimes even draws on the complexities that I try to point out to the student who thinks that it all has been done.

The third student is probably the worst failure though. It was a student that I never met, or at least I never knew that I had met.

This student took criminal law from me. Criminal law is a required first year course and on the class evaluation form he or she wrote: "I hated this course; it shouldn't be required. It was a waste of time since I will *NEVER* practice criminal law." That is, maybe it hasn't been done, maybe it could be done, but: *it's not my job to do it*. Now, it is certainly legitimate to decide not to practice criminal law, constitutional law, or any kind of public interest law, but I think that choosing not to practice in the public sector does not excuse apathy toward public issues. All citizens, of course, have a duty to be concerned about the justice of the legal system, at least as voters. And lawyers have a much greater duty owing to their greater knowledge and also to the greater likelihood that they will influence policy makers.

I failed those three students, and I've thought a great deal about how I can do better with the hundreds and maybe thousands more that I will teach. (Just saying thousands makes me a little nervous.) The easiest step, I think, is enriching what I teach with materials from other disciplines. I don't disagree with Roger Cramton that law is important in and of itself, but I think that if we're thinking about sending lawyers forth as morally-based people who want to do good, then we have to rely on more than just doctrine. Maybe the new psychological data on unconscious racism is what I should have given the first student. Maybe historical perspective on the ideological shifts on the Supreme Court was what the second student needed. For the third, perhaps I should have offered something on the sociology of the legal profession, how lawyers do become legislators and congressmen, or even something about personal ethics. This "enrichment" is not an easy task in one sense—you have to keep up with other disciplines, and that is a fair amount of work. Nevertheless it is a very manageable task.

The second step is more difficult for people who are drawn to law teaching. I think that second step is *nuturing* the visions of justice in our students. We don't think of ourselves as nurturers. I think that, despite what Roger says, most of us still like to think of ourselves as tough and brilliant and in the classroom very, very hard to deal with. I don't think that being demanding is unimportant—I think it's very important. I think pushing students to the limit is probably the unique thing about legal education. But at the same time we do that, we have to see that a lot of students walk out of first year thinking, "I cannot defend anything I believe in," often followed by "And I'm not so sure that I believe in anything." We have to somehow be willing to say to students, "Even if you can't absolutely, totally defend it, it's important to believe it. It's important to

believe if you believe what I believe, and it's also important to believe if you disagree with me."

The third thing that I know would help, but that I don't do very well, is to provide an example. I think I have to try to teach students by my own work—by how I teach, by my research and writing—that I believe in change, that I believe it's necessary, that I believe it's possible, and that I know it to be my obligation. If I expect my students to stake out a position, then maybe sometimes, just sometimes, I should be willing to do so too. I should be willing to take a position in front of them, admitting that it's imperfect, and that I cannot defend it to the wall—and that I'm not absolutely, totally certain about it. An example, of course, is never going to be perfect, but mine could certainly be much better. I think, incidentally, that such an example is almost as important to students that disagree with the professor as to students that agree. I think the importance is not in the substance of the position, but in the willingness to take a position.

Ultimately, I think, the challenge to me as a legal educator is a moral challenge, a challenge, I think, that perhaps faces educators of all sorts. That challenge is to teach the student—and frequently to relearn myself—that knowledge matters. That knowledge is needed desperately even when it is tentative. That knowledge confers power, though not unlimited power, and that knowledge carries with it enormous responsibility.